

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE: SANFORD, JOHNNIE AND SHIRE

Case # 13-12628-JDW
Chapter 13 Proceedings


**RESPONSE OF TOWER LOAN TO DEBTOR'S MOTION TO AVOID
NONPOSSESSORY, NONPURCHASE-MONEY SECURITY INTEREST**

Tower Loan of Mississippi, LLC, successor in interest to, Tower Loan of Mississippi, Inc., doing business as Tower Loan of Batesville (Tower), files this Response of Tower Loan to Debtor's Motion to Avoid Nonpossessory, Nonpurchase-Money Security Interest as follows:

1. Tower denies that all of the property in which it has a security interest is subject to lien avoidance under 11 U.S.C. §522(b). Tower denies that all such possessions are exempt and objects to debtor's claim of exemption for that property that is not exempt pursuant to Miss. Code Ann. §85-3-1, et seq., or other applicable law.

2. Tower further requests that if Debtor is not required to pay for the value of the collateral, that the Trustee be ordered to abandon any property whose lien has not been avoided from the estate.

Wherefore, Tower requests the Court to deny the motion of the Debtor and to grant other such relief as the Court may deem proper and just.

Dated this  day of August, 2013.

Tower Loan of Mississippi, LLC

By: /s/ John E. Tucker
Its Attorney

CERTIFICATE OF SERVICE

I do hereby certify that I have this day electronically filed with the Clerk of Court using the ECF system which sent notification, or mailed, via U.S. Mail, postage fully prepaid to non-ECF participants, a true and correct copy of the foregoing Response of Tower Loan to Debtor's Motion to Avoid Nonpossessory, Nonpurchase-Money Security Interest to the following:

Robert Gambrell
rg@ms-bankruptcy.com
Attorney at Law

Office of the U.S. Trustee
USTPRegion05.AB.ECF@usdoj.gov

Locke D. Barkley, Trustee
sbeasley@barkley13.com
Chapter 13 Trustee

Dated this  day of August, 2013.

/s/ John E. Tucker
John E. Tucker

John E. Tucker
MS State Bar No. 10020
First Tower Loan, LLC
Tower Loan of Mississippi, LLC
Gulfco of Mississippi, LLC
P.O. Box 320001
Flowood, MS 39232-0001
601-992-0936
Fax: 601-992-5176

LOAN NUMBER 180	BORROWER NAME SHIRE BALLENTINE, 2060 SHILOH RD, COURTLAND MS 38620	ITEMIZATION OF AMOUNT FINANCED UNDER FEDERAL LAW OF \$ 5069.67
DATE OF LOAN 01-07-13	CO-BORROWER NAME ADDRESS	Amount given to you directly.....\$ 506.04
	CO-BORROWER NAME ADDRESS	Amount paid on your account.....\$ 3368.13
Lender TOWER LOAN OF MISSISSIPPI, LLC DBA TOWER LOAN OF BATESVILLE P O BOX 1647, BATESVILLE, MS, 38606		Amounts paid to others on your behalf: Public officials.....\$ 18.00
1 ANNUAL PER-CENTAGE RATE 36.52%	2 FINANCE CHARGE \$2340.33	Insurance company: Credit Life.....\$ 256.92
3 AMOUNT FINANCED \$5069.67	4 TOTAL OF PAYMENTS \$7410.00	Credit Disability.....\$ 340.86
The cost of your credit as a yearly rate	The dollar amount the credit will cost you.	Credit Property.....\$ 481.72
5 SCHEDULE OF CONSECUTIVE MONTHLY PAYMENTS		CCC NAME \$ 98.00
NUMBER OF PAYMENTS 26	AMOUNT OF EACH PAYMENT 285.00	NAME \$
1 ST PAYMENT DUE 02/06/13	LAST PAYMENT DUE 03/06/15	NAME \$
The Annual Percentage Rate does not take into account your required deposit (escrow). SECURITY: You are giving a security interest in Personal Property		NAME \$
<input type="checkbox"/> Your real estate located at _____		NAME \$
Collateral securing other loans you have with us may also secure this loan.		NAME \$
LATE CHARGE: If a payment is more than 15 days late, you will be charged the greater of \$5.00 or 4% of the payment, not to exceed \$50.00		Subtotal of above amounts.....\$ 5069.67
FILING FEES: \$ 18.00		Prepaid Finance Charge (Closing Fee).....\$ 296.40
PREPAYMENT: If you pay off early you <input type="checkbox"/> may <input type="checkbox"/> will not have to pay a penalty (<i>Real Estate Loans Only</i>) If you pay off early, you shall be entitled to a refund of part of the finance charge.		LESS Prepaid Finance Charge.....\$ 296.40
See your Promissory Note and Security Agreement and/or Deed of Trust for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.		Amount Financed (TOTAL).....\$ 5069.67

INSURANCE: Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the annual cost.			
TYPE	DEC. C.L.	LVL. C.L.	PREMIUM
Single Credit Life		X	\$ 256.92
Joint Credit Life			\$
Credit Disability	X		\$ 340.86

SIGNATURES

I/We want credit Life insurance: <u>Shire Ballentine</u>	X:	X:	X:
We want credit Life insurance: X:	X:	X:	X:
I want credit disability insurance: <u>Shire Ballentine</u>			

You may obtain property insurance from anyone you want, provided the insurance company is acceptable to the creditor. If you get personal property insurance from or through the creditor, you will pay \$ **481.72**

☒ Dual Interest ☐ Single Interest

DISCLOSURES REQUIRED BY MISSISSIPPI LAW: Excluding the closing fee of \$ **296.40** from the finance charge, the state finance charge is \$ **2043.93** and the state contract rate is **30.66** %

PROMISSORY NOTE AND SECURITY AGREEMENT
ALL INFORMATION IN THE ABOVE DISCLOSURE STATEMENT IS INCLUDED HEREIN BY REFERENCE

PARTIES: "Borrower" means all Borrowers signing below whether one or more; and "Lender" means the Lender named above.

NOTE: For value received, Borrower, jointly and severally, promises to pay to the order of Lender the "Total of Payments" (item 4 in the disclosure statement above), in the monthly payments stated in the "Schedule of Payments" (Item 5 in the disclosure statement above) until paid in full. Any extension, renewal, renewals, or other indulgences by Lender shall not release Borrower. Borrower waives protest.

LATE CHARGE: Borrower shall pay Lender a late charge, the greater of \$5.00 or 4% of the payment on any payment that continues unpaid for more than fifteen (15) days following its due date, but Borrower shall not pay more than \$50.00 on any one scheduled payment.

PREPAYMENT REFUND: When Borrower prepays this loan in full, then: (i) if paid by a renewal loan from Lender within 30 days from the date of this loan, Lender shall cancel or refund all of the above finance charges, closing fee and credit insurance premiums on this loan, (ii) if paid by a renewal loan from Lender after 30 days, but before 90 days from the date of this loan, Lender shall refund the unearned finance charges computed by the actuarial method; (iii) if paid or renewed after 90 days from the date of this loan, Lender shall refund the unearned finance charges computed by the Rule of 78ths based on the number of days Borrower pays early, less 20 days; and (iv) if this loan is secured in whole or in part by Borrower's principal dwelling, Borrower may be entitled to refunds under federal law.

PREPAYMENT PENALTY: If this loan is secured in whole or in part by a lien on real estate and if Borrower prepays the loan in full, Borrower shall pay Lender a prepayment penalty based upon the unpaid principal balance (i.e., the unpaid balance of the Total of Payments less all applicable prepayment refunds) as follows: during the first year of the loan, 5% of such unpaid principal balance; during the second year, 4%. This prepayment penalty does not apply if the source of the prepayment of funds is a renewal or refinancing by Lender, or is paid out by insurance proceeds, or if preempted by federal law.

SECURITY INTEREST: To secure payment of this loan, Borrower grants Lender a security interest in the property described below under "Security."

BORROWER'S DUTIES: If Lender requests, Borrower shall maintain fire, theft, and extended coverage insurance on the security. Such insurance policies shall be payable to Lender and Borrower as Borrower's interest shall appear and shall provide Lender with at least ten (10) days written notice before cancellation. In addition, Borrower shall keep the security at Borrower's address shown above, in good repair and free from adverse liens and security agreements.

DEFAULT: Borrower defaults when: (i) Borrower does not pay any payment in full when due; (ii) Borrower does not fully perform any of Borrower's duties under this agreement; (iii) Borrower moves the security without first giving Lender written notice; (iv) Borrower abandons the security; (v) any of the security is lost, stolen, not maintained, destroyed, or substantially damaged; or (vi) Lender reasonably deems itself insecure.

REMEDIES: When Borrower defaults, Lender can take one or more of the following actions: (i) cancel any credit insurance and apply unearned premiums to the account; (ii) bring suit for or arbitrate the delinquent payments; (iii) accelerate and declare due, without notice or further demand for payment, the remaining balance (but in such event, upon receiving full payment, Lender shall rebate the unearned finance charge on the date of payment by using the method described in Prepayment Refund (above)); (iv) repossess and dispose of any security as a secured party under the Mississippi Uniform Commercial Code; and/or (v) foreclose on any securing deed of trust on realty. Ten (10) days notice by regular mail to Borrower at the above address shall be reasonable notice to Borrower of any disposition of any security. Borrower shall pay all cost of collection, retaking, holding, selling, and foreclosure, including a reasonable attorney's fee of 33 1/3% of the amount delinquent.

OTHER INDEBTEDNESS: The security agreement and/or deed of trust may secure all other and future indebtedness Borrower owes to Lender. Collateral securing other loans Borrower has with Lender also may secure this loan.

CREDIT REPORTING: We may report your performance under this Note to credit reporting agencies. You agree and hereby authorize us to obtain credit reports on you, both now, and at any time any portion of the debt remains owed to us. You specifically acknowledge and agree that we may disclose any default by you under this Note, along with any other relevant information, to credit reporting agencies.

SECURITY: The security to which the security interest granted hereunder attaches is indicated below and is more particularly described as follows:
VALUE: We represent to you the value of any personal property security below is \$ **7650.00**

This value excludes the value of any motor vehicles, livestock, boats or mobile homes
1 SET OF WORLD BKS ENCYCLOEDIAS, DIGITAL CAMERA, SOLOFLEX TREAD MILL, 1 TABLE MODEL MAGANAVOX, DVD PLAYER, 2ND DVD PLAYER, 1 RCA CAMCORDER, 1 RCA CAMCORDER, 2ND GE COLOR TV, 3RD TV MOTOROLA 27", 4TH EMERSON 19" TV, 1 HEWLETT PACKARD COMPUTER W/PRINTER, 3 GOLD RING CLUSTERS, 1 WIZARD LAWN MOWER, PUSH MOWER TORRO, 5TH TV 19" EMERSON, 1 TENNIS BRACLET, 6TH TV 37" BE FLAT SCREEN, LAPTOP ACER, 46"FLATSCREEN LG,

SEVERABILITY: The illegality or unenforceability of any provision of this Promissory Note and Security Agreement or any instrument or agreement entered into in connection herewith including, without limitation, shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Promissory Note and Security Agreement, the Arbitration Agreement or any other instrument or agreement entered into in connection herewith.

ARBITRATION AGREEMENT: BY SIGNING BELOW AND OBTAINING THIS LOAN, BORROWER AGREES TO THE ARBITRATION AGREEMENT ON THE REVERSE SIDE OF THIS AGREEMENT. YOU SHOULD READ IT CAREFULLY BEFORE YOU SIGN BELOW. IMPORTANT PROVISIONS, INCLUDING OUR PRIVACY POLICY, ARE CONTAINED ON THE BACK OF THIS PAGE AND INCORPORATED HEREIN

Shire Ballentine

BORROWER

BORROWER

BORROWER

THIS DOCUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF BANK OF AMERICA, N.A., AS AGENT.
IMPORTANT PROVISIONS ARE CONTINUED ON THE BACK OF THIS PAGE AND INCORPORATED HEREIN.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

File Number: 2013032

Date Filed: 1/14/2013 12:37:33 PM

C. Delbert Hosemann, Jr.

Secretary of State

A. NAME & PHONE OF CONTACT AT FILER [optional] First Tower Corp 601-992-0153	
B. EMAIL CONTACT AT FILER [optional] dale@towerloan.com	
C. SEND ACKNOWLEDGMENT TO: (Name and Address) FIRST TOWER CORP. P O BOX 320001 FLOWOOD MS 39232-0001	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME					
OR	1b. INDIVIDUAL'S LAST NAME (i.e. FAMILY NAME or SURNAME) BALLENTINE		FIRST GIVEN NAME SHIRE	SECOND GIVEN NAME	SUFFIX
1c. MAILING ADDRESS 2060 SHILOH RD		CITY COURTLAND	STATE MS	POSTAL CODE 38620	COUNTRY USA
1d. Check only if applicable and check only one box: <input type="checkbox"/> Debtor is a Trust <input type="checkbox"/> Debtor is a Trustee acting with respect to property held in trust <input type="checkbox"/> Debtor is a Decedent's Estate					

2. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME					
OR	2b. INDIVIDUAL'S LAST NAME (i.e. FAMILY NAME or SURNAME)		FIRST GIVEN NAME	SECOND GIVEN NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. Check only if applicable and check only one box: <input type="checkbox"/> Debtor is a Trust <input type="checkbox"/> Debtor is a Trustee acting with respect to property held in trust <input type="checkbox"/> Debtor is a Decedent's Estate					

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME TOWER LOAN OF MISSISSIPPI, LLC					
OR	3b. INDIVIDUAL'S LAST NAME (i.e. FAMILY NAME or SURNAME)		FIRST GIVEN NAME	SECOND GIVEN NAME	SUFFIX
3c. MAILING ADDRESS P O BOX 1647		CITY BATESVILLE	STATE MS	POSTAL CODE 39568	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

1 SET OF WORLD BKS ENCYCLOEDIAS, DIGITAL CAMERA, SOLOFLEX TREAD MILL, 1 TABLE MODEL MAGANAVOX, DVD PLAYER, 2ND DVD PLAYER, 1 RCA CAMCORDER, 1 RCA CAMCORDER, 2ND GE COLOR TV, 3RD TV MOTOROLA 27", 4TH EMERSON 19" TV, 1 HEWLETT PACKARD COMPUTER W/PRINTER, 3 GOLD RING CLUSTERS, 1 WIZARD LAWN MOWER, PUSH MOWER TORRO, 5TH TV 19" EMERSON, 1 TENNIS BRACLET, 6TH TV 37" BE FLAT SCREEN, LAPTOP ACER, 46" FLATSCREEN LG,

5a. Check only if applicable and check only one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a TRANSMITTING UTILITY				5b. Check only if applicable and check only one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing	
6. ALTERNATIVE DESIGNATION Check only if applicable and check only one box: <input type="checkbox"/> LESSEE/LESSOR <input type="checkbox"/> CONSIGNEE/CONSIGNOR <input type="checkbox"/> BAILEE/BAILOR <input type="checkbox"/> SELLER/BUYER					
7. OPTIONAL FILER REFERENCE DATA 080					